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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT CHRISTIAN BRUSELL,

Defendant and Appellant.

A105907

(Sonoma County
Super. Ct. No. SCR26673)

On June 16, 1998, Robert Christian Brusell pleaded no contest to forgery and admitted a prior prison term. He had cashed a forged personal check for \$185 made out to himself. At the time of the change of plea hearing, Brusell was serving a 12-month sentence for a parole violation because he had absconded from supervision the previous year. Based on Brusell's agreement to participate in a residential drug treatment program, the court suspended imposition of a four-year prison sentence on the forgery charge and enhancement and placed Brusell on formal probation.

Although not a condition of probation, Brusell expressly waived all custody credits for time spent in the residential treatment program and also waived credits for time served in jail until space opened for him in the program. During sentencing, the court explained to Brusell that he currently had no custody credits because he was serving a parole violation sentence. The court then obtained express waivers regarding future credits in the following colloquy:

“THE COURT: I don’t know whether you will be placed into treatment on November 24th. I have no idea. But I assume there may be some delay beyond the finishing of the parole sentence. [¶] Are you willing to waive your right to claim custody credits and good conduct credits for the time beyond May [sic] 23rd while you are waiting to get into treatment?

“THE WITNESS: Yes, I am.

“THE COURT: That will be a permanent waiver.

“THE WITNESS: Yes.

“THE COURT: So we’ll note that, the permanent waiver as to jail credits. He is supposed to be released November 23rd on the parole time. So beyond that date he would normally start collecting credits locally, but he is waiving, waiting time, credits before he gets into the program. Okay. [¶] Now, whenever you get into Turning Point, you in a typical situation, could claim day-to-day treatment credits against any future violations of probation on this file where the court would be considering sending you to prison on the suspended sentence. Are you willing to permanently . . . give up that right?

“THE WITNESS: Sure. Yes.

“THE COURT: The court finds a knowing, intelligent, voluntary waiver of the right to claim and present credits for day-to-day treatment in Turning Point or any other such residential program that is used under this program. [¶] If we need to keep you in the county jail for more than 12 months to accomplish placement, do you agree to that?

“THE WITNESS: Yes.”

After serving his sentence for the parole violation, Brusell remained in custody until February 26, 1999, when he was released to the Turning Point program. He remained in the program until he was discharged on January 2, 2000. Almost two years later, on December 31, 2001, Brusell’s probation was summarily revoked due to his admitted possession and use of drugs and alcohol. Brusell was released on his own recognizance on January 3, 2002. On February 14, 2002, the court reinstated probation and extended it an additional 12 months.

Brusell's probation was revoked again, and on September 4, 2002 he admitted a violation of probation for use of methamphetamine. On October 30, 2002, Brusell submitted to the probation department's sentencing recommendation that probation be extended for two years, until July 16, 2004, and he waived any irregularities posed by this extension. The court reinstated probation on the condition that Brusell complete another residential treatment program. At the sentencing hearing, Brusell expressly agreed to waive custody credits while he was awaiting entry into the program. He also agreed to waive previously accrued credits as follows:

"THE COURT: And they're asking for you to waive all previously-accrued custody credits for all purposes. How much time is that? . . . [¶] . . . [¶] 145 days. Do you agree to waive all that?

"THE DEFENDANT: Yes, I do.

"THE COURT: You understand what that means? If you eventually do violate probation and are sent to prison, none of that time that you would otherwise have accrued would . . . count against that prison time?

"THE DEFENDANT: Yes, I understand.

"THE COURT: You, nevertheless, with that understanding agree to waive that right?

"THE DEFENDANT: Yes, I do."

Brusell was released to the Turning Point residential drug treatment program on April 2, 2003. About seven months later, on November 10, 2003, Brusell surrendered to authorities, and his probation was summarily revoked again because he failed to complete the court-ordered program. Brusell admitted the violation of probation, and on March 11, 2004, the court revoked probation and imposed the previously suspended sentence of four years imprisonment. The court awarded a total of 183 days of credit: 123 days for time served (from November 10, 2003 through March 11, 2004), plus 60 days for good conduct. The court refused defense counsel's request that it "[c]onsider restoring some of the credits that [Brusell] ha[d] waived," explaining he had waived them in exchange for

avoiding prison. The court also ordered Brusell to pay a restitution fine of \$800, with another \$800 restitution fine imposed but suspended unless parole is revoked.

Brusell filed a notice of appeal, stating as grounds for the appeal “[i]mproper denial of credits.” His appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We have reviewed the entire record, and we agree with counsel’s assessment that no issue warrants further briefing.

DISPOSITION

The judgment is affirmed.

Parrilli, J.

We concur:

McGuiness, P. J.

Corrigan, J.